

PAYING FOR COPIES OF RECORDS FOR BUYER CAN FEEL LIKE ROBBERY

BY KELLY G. RICHARDSON

Q. Recently I put a condo into escrow. The management company charges \$750 for supplying current financial reports, CC&Rs, rules and regulations, etc., to the new buyer. \$750 seems like highway robbery! Are there any limits to what they can charge? Is this fee out of line?

J.S., SACRAMENTO

Q. HOA Robbery! I am selling a condo. The homeowners association has three management companies; a master, a sub-association, and one for the community recreation center. They are charging me \$855 each to provide the disclosure documents. Is there any way to negotiate that down to a reasonable fee. Escrow does more work and doesn't charge that much. It should be illegal. No?

J.M., LAGUNA NIGUEL

A. Dear J.S. and J.M.: Civil Code Section 4525 lists nine disclosures that HOA members must give to prospective purchasers (there is a 10th disclosure, minutes, which purchasers can also request). Most HOAs already have seven of the nine items in place, but two items can require some extra work (notification of any unpaid assessments or fines, and a disclosure of any future assessments or increases that have been approved). Lenders may also require certain additional

information from the HOA before issuing a mortgage. Management companies normally handle this for the association, and some clerical work is required.

Pursuant to Civil 4530, sellers pay the association's fee for the documents. Civil 4530(b)(1) requires associations to charge "actual reasonable costs" for document fees. However, under the 2007 appellate case of *Berryman v. Merit Property Management*, "actual" cost is whatever the management charges. As to reasonableness, most HOA boards do not scrutinize or question the management's document fees, and there is no established definition of "reasonable".

Management companies struggle with the competitive pressure to reduce base monthly management fees, and some companies make ends meet by charging fees on extra services outside the base management responsibilities. These fees are paid by the HOA member, so most HOA boards don't pay attention to them. While most management companies are not greedy, one occasionally hears of companies going too far. I inquired with two management company owners about the fees you experienced. One said those fees are "outrageous" and the other described them as "excessively high."

There are several ways to save money. If a homeowner asks for advance disclosure

of the document fees, Civil 4530(b)(2) requires the association to use the form prescribed by Civil 4828 to separately disclose each such fee. This rarely exercised right enables sellers to order only what they need. Associations (and, by extension, their management companies) are prohibited by Civil 4530(b)(5) from bundling documents together and thereby obscuring the fee.

The association board can require that management post most of the documents on the HOA's website, so members would need to request fewer documents. The board also could negotiate a more reasonable document fee.

If the management charges an excessive fee (the word "excessive" would be determined on specific circumstances, not any statewide general rule), the association could be sued under Civil 4540 for damages, a civil penalty of up to \$500, and attorney fees. Because the association takes the hit on this if their management is greedy, perhaps boards should look a little more closely at this issue.

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